

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MIDAS FUND, INC.,

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| USDS SDNY            |
| DOCUMENT             |
| ELECTRONICALLY FILED |
| DOC#:                |
| DATE FILED: 7/25/08  |

Plaintiff,

ORDER

- v -

07 Civ. 6707 (NRB)

GAMMON GOLD, INC., et al.,

Defendants.

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NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE

**WHEREAS**, by letter dated September 14, 2007, the defendants sought leave to file motions to dismiss this securities fraud action on several grounds, including, inter alia, the failure to adequately allege scienter as required by Fed. R. Civ. P. 9(b) and the Private Securities Litigation Reform Act ("PSLRA"); and

**WHEREAS** the Court granted Midas Fund, Inc. ("Midas") "one last" opportunity to amend its complaint and, shortly thereafter, Midas filed a second amended complaint; and

**WHEREAS** the defendants subsequently filed motions to dismiss the second amended complaint on the grounds outlined in their September 17 letter; and

**WHEREAS** the defendants' motions were fully briefed on February 15, 2008 and the Court heard oral argument on the motions on July 8, 2008; and

**WHEREAS** a related class action against the defendants has been pending before the Superior Court of Justice in Ontario, Canada and the named plaintiff in that action recently filed an amended complaint which includes detailed allegations concerning the non-underwriter defendants' knowledge of the Ocampo mine's production capacity, which potentially could impact the pending motions; and

**WHEREAS**, by letter dated July 15, 2008, Midas has sought leave to file a third amended complaint that includes many of the newly alleged facts in the amended class action complaint; it is hereby

**ORDERED** that Midas shall have a FINAL opportunity to amend its complaint within thirty (30) days, if counsel for the plaintiff believes he can do so consistently with Fed. R. Civ. P. 11 and in a manner that separately addresses the issues identified by both sets of defendants; and it is further

**ORDERED** that the defendants' pending motions to dismiss are denied without prejudice to their refiling motions addressed to the third amended complaint;

**ORDERED** that if, after reviewing the third amended complaint, the defendants still wish to make their motions, the parties shall agree on a proposed briefing schedule, spanning no more than 60 days between the due dates for the defendants'

opening and reply briefs, and submit a proposed scheduling order by no later than September 5, 2008.

Dated: New York, New York  
July 24, 2008

  
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NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE

A copy of the foregoing Order has been mailed on this date to the following:

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